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TITLE 12. HEALTH

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

12 VAC 35-190. Regulations Establishing Procedures for Voluntarily Admitting Persons Who Are Mentally Retarded to State Mental Retardation Facilities.

Statutory Authority: §§ 37.1-10 and 37.1-65.1 of the Code of Virginia.

Effective Date: January 15, 2003.

Summary:

The amendments revise provisions relating to voluntary admission to residential training facilities for the mentally retarded to require the case management community services board to be responsible for arranging admissions to and discharges from state training centers; update definitions of terms; and generally update the existing provisions to be consistent with current practice and statutory requirements. The amendments also include provisions for an applicant to seek reconsideration from the commissioner of any decision to deny admission to a training center.

12 VAC 35-190-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Admission" means placement of an individual in a residential facility for individuals with mental retardation as defined in this chapter so that the facility becomes the individual's primary locus of care, treatment, and training.

"Case management community services board (CSB)" means a citizens board established pursuant to § 37.1-195 of the Code of Virginia that serves the area in which an adult resides or in which a minor's parent, guardian or legally authorized representative resides. The case management CSB is responsible for case management, liaison with the facility when an individual is admitted to a state training center, and predischARGE planning. If an individual, or the parents, guardian or legally authorized representative on behalf of an individual, chooses to reside in a different locality after the individual's discharge from the facility, the community services board serving that locality becomes the case management CSB and works with the original case management CSB, the individual receiving services and the state facility to effect a smooth transition and discharge.

"Commissioner" means the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"Discharge plan" or "predischARGE plan" means a written plan prepared by the case management CSB in consultation with the state facility pursuant to § 37.1-197.1 of the Code of Virginia. This plan is prepared when the individual is admitted to the facility and documents the planning for services after discharge.

"Facility" means a state training center for individuals with mental retardation under the supervision and management of the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"Guardian" means:

For Minors - An adult who is either appointed by the court as a legal guardian of said minor or exercises the rights and responsibilities of legal custody by delegation from a biological or adoptive parent, upon provisional adoption or otherwise by operation of law.

For Adults - a person appointed by the court who is responsible for the personal affairs of an incapacitated adult under the order of appointment. The responsibilities may include making decisions regarding the individual's support, care, health, safety, habilitation, education and therapeutic treatment. Refer to definition of "incapacitated person" at § 37.1-134.6 of the Code of Virginia.

"Legally authorized representative" means a person permitted by law or regulations to give informed consent for disclosure of information and give informed consent to treatment, including medical treatment and participation in human research on behalf of an individual who lacks the mental capacity to make these decisions.

"Mental retardation" means substantial subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior.

12 VAC 35-190-20. (Repealed.)

12 VAC 35-190-21. Application for admission process.

A. Requests for admission to a facility shall be processed through the case management CSB. A parent, guardian, or legally authorized representative seeking admission to a facility for an individual with mental retardation shall apply first to the CSB that serves the area where the applicant, his parent, guardian, or legally authorized representative is currently residing.

B. If the case management CSB determines that the services for the individual are not available in the community or the individual chooses to obtain services in the state facility, the CSB shall forward a prescreening report, pursuant to § 37.1-65.1 B of the Code of Virginia, to the facility serving individuals with mental retardation from that geographic section of the state in which the applicant or his parent, guardian, or legally authorized representative is currently residing.

The prescreening report shall include at a minimum:

1. An application for services;
2. A medical history indicating the presence of any current medical problems as well as the presence of any known communicable disease. In all cases, the application shall include any currently prescribed medications as well as any known medication allergies;
3. A social history and current status;
4. A psychological evaluation that has been performed in the past three years unless the facility director or designee determines that sufficient information as to the applicant's abilities and needs is included in other reports received;
5. A current individualized education plan for school-aged applicants unless the facility director or designee determines that sufficient information as to the applicant's abilities and needs is included in other reports received;
6. A vocational assessment for adult applicants unless the facility director or designee determines that sufficient information as to the applicant's abilities and needs is included in other reports received; and
7. A completed discharge plan outlining the services to be provided upon discharge and anticipated date of discharge.

12 VAC 35-190-30. Determination of suitability for admission.

A. Within 30 working days from the receipt of the completed prescreening report, the director of the facility, or his designee, shall notify the case management CSB in writing of the determination on the admission request.

B. Determination of suitability for admission by the director shall be based upon the following criteria and shall be so stated in his written decision:

1. The individual has a primary diagnosis of mental retardation;
2. The diagnosis of mental retardation has been made by an interdisciplinary team of qualified mental retardation professionals upon review of the completed prescreening report; and
3. The facility has available space, training, treatment, and habilitation services appropriate to meet the needs of the individual.

C. If the director finds that the applicant is not suitable for admission to the facility, he shall state the reasons for his decision and may recommend alternative locations for needed services.

12 VAC 35-190-40. (Repealed.)

12 VAC 35-190-41. Requests for reconsideration of the director's determination.

In the event that (i) the case management CSB making the request for admission, or (ii) a person seeking admission to a facility, disagrees with the determination of the director, the CSB, or person seeking admission, or both may request a reconsideration of the determination by submitting a request in writing to the commissioner within 10 days of receiving such determination. Upon receipt of a request for reconsideration, the commissioner shall notify the facility director and the facility director shall forward the prescreening report package and related information to the commissioner within 48 hours. The commissioner shall also provide an opportunity for the person requesting reconsideration to submit for review any additional information or reasons why the admission should be approved. The commissioner shall render a written decision on the request for reconsideration within 30 calendar days of the receipt of the request and notify all involved parties. The commissioner's decision shall be binding.

12 VAC 35-190-50. (Repealed.)

12 VAC 35-190-51. Procedure for admission.

Upon receipt of written notification from the facility director that an individual is suitable for admission, the case management CSB will inform the individual or the individual's parent, guardian or legally authorized representative of this decision and assist the parent, guardian or legally authorized representative in initiating a judicial proceeding pursuant to § 37.1-65.1 of the Code of Virginia. When the judge has certified that the individual is eligible for admission to a facility in accordance with subsection C3 of §37.1-65.1 of the Code of Virginia, a date for admission to the facility will be established.